



5-9-05

IFW

4811 - 16th Street
Lubbock, Texas 79416
May 6, 2005

Attention Kien T. Nguyen, Primary Examiner
Commissioner For Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Tel : 703-308-2493

Dear Examiner Nguyen:

Re: Application No: 10/701/202; filing date: 11/04/2003
Inventor: Benjamin Michael Lee

Thank you for your Office communication of 4/26/2005.

We have noted

Status:

2a) FINAL

Disposition of Claims:

- 4) claims 1-3 are pending in the application
- 6) claims 1-3 are rejected

We believe claims 1-3 should be allowed, and we appreciate the opportunity to clarify our position with the additional new information and explanations, as set out below.

Claim Rejections - 35 USC § 102

For convenience we will address your second reason for rejection first:

1) Re: *Claims 1-3 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The claimed invention was introduced by Green Eggs & Hammocks on 10/07/2002 (see attached sheets) which is more than a year from the filing date 11/04/2003.*

Answer:

We have been advised by a patent attorney in the Patent Legal Administration Dept. that even if there was a "public use or sale of the invention" on 10/07/2002 (which we do not agree, for reasons set out in our letter of June 30, 2004), 35 U.S.C. §102(b) does not bar patentability because there was not a gap in time of "more than one year prior to the date of the application for patent in the United States." The alleged "public use or sale" was 10/07/2002. The date of the Provisional Patent Application was 11/21/2002 – only 45 days after the alleged public use or sale. We were advised by the Patent Legal Administration Dept. that the applicant can rely upon the Provisional Application filing date as long as benefit of the Provisional Patent